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101ST CONGRESS
1st Session

SENATE

REPORT
101-208

AUTHORIZING THE STATE OF OKLAHOMA AND THE KIOWA, COMANCHE, AND APACHE TRIBES TO ENTER INTO AN AGREEMENT REGARDING THE EXERCISE OF STATE JURISDICTION OVER A PORTION OF INDIAN COUNTRY LOCATED IN COMANCHE COUNTY, OK

NOVEMBER 16 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1526]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1526) to authorize the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into an agreement regarding the exercise of State jurisdiction over a portion of Indian country located in Comanche County, OK having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 1, beginning on line 5, strike all of section 1 and insert in lieu thereof the following:

SECTION 1. AUTHORIZATION OF LEASE AND EXERCISE OF JURISDICTION BY THE STATE OF OKLAHOMA.

(a) LEASE.—The State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee are authorized to enter into a lease under which the Fort Sill Indian School is leased by the State for the purpose of operating a minimum security correctional facility. Such lease shall require the appropriate approvals of the Kiowa, Comanche, and Apache Indian tribes and the Secretary of the Interior or his designee.

(b) JURISDICTION.—The State of Oklahoma is authorized to exercise exclusive civil and criminal jurisdiction over the Fort Sill Indian School lands during the term of such lease, or any renewal or extension thereof.

(c) EFFECTIVE DATE.—The State of Oklahoma shall be vested with jurisdiction over the Fort Sill Indian School lands on the date that the Secretary of the Interior publishes in the Federal Register those portions of the lease

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between the State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee that relate to the assumption of jurisdiction by the State of Oklahoma and the future reversion of such jurisdiction to the United States or Kiowa, Comanche and Apache Tribes.

(d) SAVINGS CLAUSE.—Nothing in this Act shall effect jurisdiction over any cause of action which arose, or offense which was committed, prior to the effective date of any change of jurisdiction as provided by the terms of the lease authorized by this Act.

2. On page 2, in line 11, strike the phrase "section 1(b)" and insert in lieu thereof the phrase "section 1".

3. On page 3, in line 1, strike the phrase "section 1(b)" and insert in lieu thereof the phrase "section 1".

PURPOSE

The purpose of S. 1526 is to authorize the State of Oklahoma and the Kiowa, Comanche and Apache Tribes of Oklahoma, to enter into an agreement regarding the exercise of state jurisdiction over a portion of Indian country located in Comanche County, Oklahoma.

The bill consists of four sections. The bill authorizes the State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee to negotiate a lease of lands known as the Fort Sill Indian School property for purposes of establishing a minimum security correctional facility to be operated by the State. The bill will permit the Kiowa, Comanche and Apache Intertribal Land Use Committee to execute this lease on behalf of the three tribes and, as a part of said lease, to authorize the State of Oklahoma to exercise full civil and criminal jurisdiction over the property and all persons thereon. Upon expiration of the lease, the jurisdictional status of the land will revert to its current status.

The bill has the support of the State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee. The Administration also supports the bill.

BACKGROUND

The Fort Sill Indian School was established in 1871 as a private school for Indian students. In 1890, the operation of the school was assumed by the Bureau of Indian Affairs to serve the children of the Comanche and Kiowa tribes of Oklahoma. The BIA continued to operate the Ft. Sill facility as a major elementary and secondary boarding school, primarily serving the Indian tribes of western Oklahoma, until 1983. In that year, as a result of a new policy to close Indian boarding schools and as a budget reduction decision, the BIA closed the Ft. Sill facility and the title to the lands and improvements were administratively declared to be held by the United States in trust for the joint benefit of the Kiowa, Comanche, and Apache tribes. The tribes administer the lands and facilities through the Kiowa, Comanche and Apache Intertribal Land Use Committee.

The former Ft. Sill school lands are comprised of 115 acres and are located on the eastern edge of Lawton, Oklahoma. The im-

provements include 139,191 square feet of building space in the major campus buildings, including classroom, office and administration, gym, shop, cafeteria, dormitory, and athletic building. In addition, there are 50,000 square feet of space included in nine two and three bedroom on-campus dwellings. Other amenities include tennis courts, a football field, a softball field, and other outdoor areas for recreation.

Since the transfer of the lands and improvements to the tribes, the Intertribal Land Use Committee has been seeking to put the lands to a beneficial or income-producing use. In recent months, the Committee, working with the Oklahoma State Department of Corrections, has developed a proposal under which the State would lease the lands and improvements for a minimum security correctional facility.

The terms of the proposed lease have been agreed upon by the parties, but the State will not enter into the lease because of its concern about the status of criminal and civil jurisdiction over actions and activities of inmates and employees of the correctional facility to be operated on the lands. Under existing law, it is very likely that criminal offenses committed by or against an Indian on such lands would be subject to Federal or tribal, not state, jurisdiction. Also, confusion would exist as to the applicable law and appropriate forums—Federal, state or tribal—for civil causes of action.

S. 1526 would resolve this problem by providing that, during the effective term of any lease of such lands by the State for a correctional institution, the State will exercise the same criminal and civil jurisdiction over such lands as it does over the other non-Indian lands within the State. Such jurisdiction would revert to the United States and the tribes upon the expiration or cancellation of such lease.

LEGISLATIVE HISTORY

On August 3, 1989, Senator Boren (for himself and Senator Nickles) introduced S. 1526, to authorize the State of Oklahoma and the Kiowa, Comanche and Apache Tribes of Oklahoma, to enter into an agreement regarding the exercise of state jurisdiction over a portion of Indian country located in Comanche County, Oklahoma. The bill was referred to the Select Committee on Indian Affairs for consideration. A hearing on the bill was held by the Select Committee on September 15, 1989. On November 9, 1989, the Select Committee, in open business session, adopted S. 1526 with two amendments and order the bill reported with a recommendation that the bill, as amended, do pass.

A companion bill, H.R. 2854, was introduced in the House of Representatives on July 11, 1989, by Mr. McCurdy, and was referred to the House Committee on Interior and Insular Affairs for consideration. The bill was reported out of Committee, with amendments, on October 11, 1989, but has not been acted upon.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In open business session on November 9, 1989, the Select Committee on Indian Affairs, by a unanimous vote of a quorum

present, ordered the bill, S. 1526, reported with amendments, with the recommendation that the Senate adopt the bill as amended.

SECTION-BY-SECTION ANALYSIS

Section 1

Subsection (a) provides that the State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee are authorized to enter into a lease of the Ft. Sill School lands for a minimum security correctional facility subject to approval of such lease by appropriate action of the Kiowa, Comanche and Apache tribes and of the Secretary of the Interior.

Subsection (b) provides that the State of Oklahoma is authorized to exercise exclusive civil and criminal jurisdiction over such lands during the term of such lease or any renewal or extension thereof.

Subsection (c) provides that the State's jurisdiction will vest on the date that the Secretary of the Interior publishes in the Federal Register the lease terms providing for the assumption of state jurisdiction and the future reversion of such jurisdiction to the United States and the tribes.

Subsection (d) provides that changes in jurisdiction under the terms of the lease and this legislation shall not affect civil and criminal causes of action which arise prior to the effective date of the such changes.

Section 2

Section 2 provides that, upon expiration or cancellation of the lease, the jurisdiction on the school lands will revert to the United States and the three Indian tribes.

Section 3

Section 3 provides that, except as provided in section 1, nothing in the legislation is to be construed to grant the State civil or criminal jurisdiction over any Indian country in the State.

Section 4

Section 4 provides, for the purposes of this Act, that the Secretary of the Interior shall publish in the Federal Register a legal description of the Fort Sill Indian School property that is the subject of this lease.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1526, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1526, a bill to authorize the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into an agreement

regarding the exercise of state jurisdiction over a portion of Indian country located in Comanche County, Oklahoma, as ordered reported by the Senate Select Committee on Indian Affairs, November 9, 1989. We estimate that enactment of this bill would result in no cost to the federal government and no significant cost to state and local governments.

S. 1526 would authorize the State of Oklahoma to lease tribal land from the Kiowa, Comanche and Apache Intertribal Land Use Committee for use as a correctional facility. Currently, this property falls under federal and tribal jurisdiction. In order to avoid confusion over the legal status of this land and acts committed on it, S. 1526 would provide for the State of Oklahoma to exercise civil and criminal jurisdiction over the property for the period of the lease.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1526 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has not received any communications from the Executive Branch with respect to S. 1526 other than the statement submitted at the hearing on the bill. The testimony follows:

STATEMENT OF WALT MILLS, ACTING DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR

Mr. Chairman I am happy to be here to testify on S. 1526, a bill to authorize the exercise of state jurisdiction over a portion of Indian country located in Comanche County, Oklahoma. The Administration supports S. 1526 if amended to address our concerns.

Although discussions between the tribes and the State of Oklahoma are in their genesis stages, we foresee that this proposed lease arrangement would be very beneficial to the three tribes in their pursuit of economic self-sufficiency.

Section 1 of the bill would permit the State of Oklahoma to lease from the Kiowa, Comanche and Apache Intertribal Land Use Committee the Fort Sill Indian School property and improvements (located in Comanche County, Oklahoma) for the purpose of operating a minimum security correctional facility for the duration of the lease and any renewal or extension of such lease. Civil and criminal ju-

risdiction would be transferred to the State of Oklahoma during the lease period.

Currently, the representatives of the Kiowa, Comanche and Apache tribes on the Intertribal Land Use Committee do not possess the proper authority to commit the tribes to the exercise of state jurisdiction. The tribal constitution of the Kiowa Tribe places that authority in the Kiowa Indian Council which is made up of all tribal members over the age of 18. In addition, another referendum would be required by the tribal membership whether to approve the lease for the intended purpose of building a correctional facility. The Comanche tribal constitution requires a referendum on both the issue of jurisdiction and use. The Apache Business Committee has the delegated authority to enter into the lease with the state with Bureau approval. However, it does not have the power to delegate such authority to its representatives on the Intertribal Land Use Committee.

In order to allow the tribes to empower the Intertribal Land Use Committee to enter into the lease agreement, we recommend that the following sentence be added at the end of section 1(b): "Such lease shall require the approval of the Kiowa, Comanche and Apache Indian tribes and the Secretary of the Interior or his designee."

Section 2 provides that civil and criminal jurisdiction by the State of Oklahoma will terminate upon the expiration or cancellation of the lease. S. 1526 does not clearly specify whether this state jurisdiction would be exclusive or concurrent. We recommend that the bill be amended to specify that the State would have exclusive jurisdiction.

Section 3 provides that the bill grants civil and criminal jurisdiction to the State of Oklahoma only over the Fort Sill Indian School site. We have no objection to this provision.

Section 4 directs the Secretary of the Interior to publish in the Federal Register a legal description of such land by no later than the date that is 60 days after the date of enactment of this Act. We have no objection to this provision.

This concludes my prepared testimony. I will be happy to answer any questions the Committee may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1526 will not result in any changes in existing law.

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